

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 13, 2007

The Billings City Council met in regular session in the Council Chambers on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Ron Tussing called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Ulledalen gave the invocation.

ROLL CALL – Councilmembers present were Ronquillo, Gaghen, Stevens, Veis, Ruegamer, Ulledalen, Boyer, and Jones. Councilmembers Brewster and Clark were excused.

MINUTES – July 23, 2007, approved as printed.

COURTESIES:

- Mayor Tussing displayed a “Preserve America” certificate the City of Billings received from First Lady Laura Bush designating Billings, Montana, as a 2007 Preserve America Community “in recognition of its continuing commitment to preserving and using its cultural and natural resources for the benefit and enjoyment of the public.”

PROCLAMATIONS – none

ADMINISTRATOR REPORTS:

- City Administrator Tina Volek referenced revised Agenda Item 1B, Airport Master Plan, included in Friday's packet, recommending Mead & Hunt in the amount of \$543,791. She noted a copy was also in the Ex-Parte notebook for public use.
- Ms. Volek referenced a letter from Sheryle Shandy, Executive Director of the Billings Food Bank, and a staff memorandum pertaining to Agenda Item 5. She noted a copy was also in the Ex-Parte notebook for public use.
- She noted a copy of an e-mail received from Stanley McIntire asking Council to reconsider its approval of the Emma Jean Subdivision at the last Council meeting, also included in the Ex-Parte notebook.
- Ms. Volek referenced an agenda add-on request included in Friday's packet from the Police Department accepting a DUI Task Force donation to purchase two ICOP digital in-car video systems in the amount of \$11,977.20. Ms. Volek asked the Council to add the item to that evening's agenda in order to have the quote honored by August 15, 2007. She noted a copy was included in the Ex-Parte notebook.
- Ms. Volek reminded the Council the Agenda Review meeting for the August 27th agenda was scheduled for tomorrow at 5:30 p.m. in the City Hall Conference Room.

Councilmember Veis moved to add acceptance and recognition of the donation from the DUI Task Force for two ICOP digital in-car video systems to the Consent Agenda, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved. The item was added as Consent Agenda Item 1U.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: 1 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)
(*NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.*)

- JEFF BOLLMAN, 1371 Rimtop Drive, said he worked for the Department of Natural Resources and would like to comment on Consent Agenda Item S, the preliminary major plat for Skyview Ridge Subdivision. Mr. Bollman stated Council approved first reading for Zone Change #814 at the last Council meeting, and the preliminary plat followed up from the zone change and implemented part of the zoning master plan. Mr. Bollman thanked the efforts of the Planning Department, Public Works Department, and Parks Department for working through the issues and challenges with the plat and urged the Council to follow the Planning Board recommendation for conditional approval.

CONSENT AGENDA:

1. A. Bid Awards:

(1) New Landfill Compactor. (Opened 7/24/07) Recommend Tractor & Equipment, \$584,929.00.

B. Airport Improvement Program (AIP) Airport Master Plan Update Request for Proposals. Recommend Mead & Hunt, \$543,791.

C. Approval of two-year service contract with Big Sky Linen Supply for uniform rental/purchase and laundry services. \$65,130.00.

D. Approval of one-year agreement to provide library services to Golden Valley County. \$6,874.80 annual revenue.

E. Approval and award of field light salvage from the existing Cobb Field to the Billings American Legion Baseball organization.

F. Approval and award of red dirt and sod salvage from the existing Cobb Field to the Billings Heights National Little League in conjunction with Little League Baseball Montana District #1 and Billings American League Baseball.

G. Approval of Assignment and Transfer of the West End Hangar Ground Lease from Martin Elshire to Steve Vold.

H. Approval of 3-year Park I Lease Agreement with Budget Instant Print, Inc., \$39,241.80 3-year total revenue.

I. Approval and acceptance of Federal Aviation Administration (FAA) Airport Improvement Program (AIP) Grant 32.

J. Memorandum of Understanding with BikeNet for Pepsico Grant Application for Bike Lanes.

K. Easement from Yellowstone County for installation of a gateway monument located on Lot 24, Block 182, of Billings Original Town at 5th Avenue South and South 27th Street at no cost to the City.

**L. W.O. 04-33: Lake Elmo Drive (Hilltop Road to Wicks Lane)
Right-of-Way Acquisition**

(1) **Parcel 23:** Portion of Lot 14, Josephine Subdivision, Scott M. Longman and Elmer L. Rudolph & Lavonne K. Rudolph. \$8,800.00.

(2) **Parcel 46:** Portion of Tract 1-B of Amended Tract 1 of Certificate of Survey 332, John M. Wiesner & Deborah K. Wiesner. \$1,950.00.

(3) **Parcel 51:** Portion of Lot 21, Block 2 of Broadmoor Subdivision, Shane Headlee and Hope Headlee. \$9,600.00.

M. Street Closures:

(1) Billings Central High School Homecoming Parade, 5:00 p.m. to 6:15 p.m., September 29, 2007, leaving Central High School onto Division Street; west on Broadwater Avenue; north on 5th Street West; through the intersection at Grand Avenue; ending in the Senior High School parking lot.

(2) Skyview High School Homecoming Parade, 12:30 p.m. to 2:00 p.m., September 14, 2007, leaving Skyview High School; proceeding east on Wicks Lane; ending at St. Bernard's Church.

(3) YMCA 2007 Marathon, 5:30 a.m. to 1:30 p.m., September 16, 2007, leaving Molt, MT, east to Sam Snead Trail and Walter Hagan Drive, south on 54th Street West, east on Rimrock Road, south on 46th Street West, east on Rangeview, north on 38th Street West, east on Poly Drive, south on Patricia Lane, east on Colton Boulevard, south on 17th Street West, east on Parkhill Drive, south on 3rd Street West, ending at Daylis Stadium.

N. Approval of Library Donation of 40 plastic chairs to Friendship House.

O. Resolution #07-18582 expanding the boundaries of Special Improvement Lighting Maintenance District 288 to include four existing street lights near the intersection of Wentworth Drive and Glenhaven Drive.

P. Resolution #07-18583 authorizing the issuance and calling for the public sale of \$168,000 pooled special improvement districts bonds (SID 1375 and SID 1377).

Q. Resolution #07-18584 temporarily suspending Section 24-411, BMCC, Parking for Camping Purposes, in the Shrine Auditorium parking lot during the Billings Big Sky Polka Fest, September 1-3, 2007.

R. Second/Final reading Ordinance #07-5425 for Zone Change #814: A zone change from Residential 9,600 to Community Commercial, Neighborhood Commercial, Residential Professional, Residential Multi-family Restricted, Residential 6,000, Residential 7,000 Restricted, and Public generally located south of Wicks Lane, west of Governors Boulevard, and north of Constitution and Kootenai Avenues, State of Montana, owner.

S. Preliminary Major Plat of Skyview Ridge Subdivision, 1st Filing, generally located south of Wicks Lane, west of Governors Boulevard, and north of Constitution and Kootenai Avenues in Billings Heights; approval of a trail on the south side of Swift Current Drive, the northeast side of Keno Street, and the southeast side of Targhee Avenue in lieu of sidewalks; and conditional approval of the plat and adoption of the Findings of Fact.

T. Bills and Payroll.

- (1) July 17, 2007
- (2) July 20, 2007
- (3) May 1 – May 31, 2007 (Municipal Court)
- (4) June 1 – June 30, 2007 (Municipal Court)

U. Donation from DUI Task Force for two ICOP Digital In-Car Video Systems, \$11,977.20.

(Action: approval or disapproval of Consent Agenda.)

Councilmember Jones separated Items E and F. Councilmember Stevens separated Item J. Councilmember Ulledalen moved for approval of the Consent Agenda with the exception of Items E, F, and J; seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item E, seconded by Councilmember Ruegamer. Councilmember Jones asked Staff if Item E included the Billings Heights and then commented he must have separated Item E in error. Councilmember Veis said he had a question on Item E. He asked about

the Release of All Claims form and the Certificate of Insurance that were listed as Attachments B and C but not included with the staff report.

Parks Director Mike Whitaker said he had spoken that day with the American Legion, and they would be providing the documents within the next couple of days. City Administrator Volek noted the American Legion had been working with City Attorney Brooks on questions they had and suggested approval contingent upon receipt of the items. City Attorney Brooks said he had provided Mr. Whitaker with the releases that were reviewed in his office and provided the American Legion with the necessary insurance coverage information. Councilmember Veis asked if delay of approval for two weeks would impact the scheduling of Cobb Field. Mr. Whitaker said it would not.

Councilmember Veis made a substitute motion to delay Item 1E until the August 27, 2007, council meeting, seconded by Councilmember Stevens. On a voice vote, the substitute motion was unanimously approved.

Councilmember Ulledalen moved for approval of Item F, seconded by Councilmember Ruegamer. Councilmember Ruegamer asked Mr. Whitaker about the change from red dirt to gray dirt and asked why the red dirt could not be re-used. Mr. Whitaker said HNTB Architecture indicated it would be more costly to re-use the dirt at the new facility because of the required manpower to salvage, clean, and filter the dirt. Councilmember Ruegamer stated he was not convinced the dirt could not be re-used and asked Mr. Whitaker to check into it. Mr. Whitaker stated he received the information from HNTB Architecture and added that Minor League Baseball had higher standards for the in-field than Little League.

Councilmember Veis made a substitute motion to delay Item 1F until the August 27, 2007, council meeting to allow the Parks Department to bring back additional information on the dirt salvage, the insurance, and an item Councilmember Jones would be discussing concerning the donation. The motion was seconded by Councilmember Boyer.

Councilmember Jones moved to amend the original motion and remove the wording "Heights Little League" in the documents, seconded by Councilmember Boyer. Councilmember Jones said he felt Montana District #1 should decide which Little Leagues would receive the salvage. He said Montana District #1 and American Legion Baseball should be the only two parties negotiating for the salvage. On a voice vote, the amended motion was unanimously approved.

On a voice vote, the substitute motion to delay Item 1F until August 27, 2007, was unanimously approved.

Councilmember Ulledalen moved for approval of Item J, seconded by Councilmember Boyer. Councilmember Stevens said Item J was a trails issue and asked Mayor Tussing about his agreement to comply with the Board of Ethics recommendation to recuse himself from voting on trails issues. Mayor Tussing said he had agreed to abide by the Board of Ethics recommendation to recuse himself from any item he knew his wife was involved in. Mayor Tussing said he had no knowledge his wife was involved with the BikeNet Pepsico Grant for Bike Lanes. Councilmember Stevens told Mayor Tussing his wife had been

involved with BikeNet in the past and according to the May 25, 2007, Billings Gazette, he said he would disqualify himself from voting on trails issues because his wife was a Trails Planner for the City County Planning Department. Councilmember Stevens said she failed to see how the City County Planning Department Trails Planner would not have any involvement. Councilmember Stevens said public policy was to preserve the confidence of the public in its government, and she felt a recusal was needed to preserve the public confidence in its government. Mayor Tussing said he received a letter from the Ethics Commission on June 11, 2007, clarifying its position, and he intended to abide by its recommendation. Mayor Tussing told Councilmember Stevens if she did not agree, she should file a complaint with the Ethics Commission. Councilmember Stevens asked Mayor Tussing if he was going to disclaim any knowledge of his wife's involvement in any of the trails projects and vote. Mayor Tussing stated he did not say "any of these projects". He stated he said he had no knowledge his wife was involved in "this" one. Councilmember Stevens said that was difficult to believe. Mayor Tussing told Councilmember Stevens she would "obviously believe whatever she wanted no matter what". On a voice vote, the motion was approved. Councilmember Stevens voted 'no'.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #07-18585 approving Council Contingency Fund appropriation in the amount of \$12,500 for the City Website Renovation project. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek stated the City Council had reviewed a proposal to update the City's website from Civic Plus at a recent Work Session. She said the update would cost \$33,800.00 and make the website more dynamic and easier for Staff to update, as well as add a tracking system for public inquiries, job listings, jobs bids, etc. Ms. Volek said \$17,500.00 would come from the Administration budget; \$3,800.00 from IT; and the remaining \$12,500.00 would come from Council Contingency Funds. She said the project would be a one-time expenditure with an annual maintenance cost that would be budgeted in future budget items. Ms. Volek said the update would make the website more responsive. She said Civic Plus had given the City a scholarship that reduced the original cost. Ms. Volek said there was no staff presentation, but staff was available for any questions.

The public hearing was opened. There were no speakers, and the public hearing was closed.

Councilmember Ruegamer moved for approval of Item 2, seconded by Councilmember Stevens. Councilmember Stevens said she would like the public to know the update would help the Council meet two of its strategic goals set last winter. She said IT was donating \$3,800.00 from their overtime expenditures budget, Council was putting up \$12,500.00, and Administration was putting in \$17,500.00 because the update needed to move forward. Councilmember Stevens said she felt the public would be very pleased with the update.

Councilmember Jones said he would vote for the update, but said he felt Council needed to be careful about dipping into its contingency fund. He said it would be the second time this year; and it would only take one big incident, such as snow removal expense, to spend it all.

Councilmember Boyer verified the original amount of the Council Contingency Fund was \$75,000.00. Ms. Volek confirmed it started at \$75,000.00 and was currently at \$52,000.00. Ms. Volek said there had been an approved expenditure for fireworks enforcement overtime. Ms. Volek said the website update was originally a Supplemental Budget Request that was not approved; and a committee, with the assistance of Councilmember Stevens, worked to identify funding sources.

Councilmember Gaghen said she would like to clarify for the public that the fiscal year began July 1st, and when Councilmember Jones mentioned his concern about spending contingency funds twice so far this year, he was referring to within the first month of the fiscal year. Ms. Gaghen said that was why caution needed to be taken.

Councilmember Ruegamer asked how many daily, weekly, or monthly hits the website received. City Administrator Volek said she did not have that information on-hand but could provide it at a later date. Councilmember Ruegamer said he felt the update would be a very good use of money. City Administrator Volek said she had just been informed the current website did not count hits.

On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTIONS – Special Improvement District 1379, King Avenue West from South 31st Street West to Shiloh Road.

(a) Resolution # 07-18586 creating Special Improvement District 1379, King Avenue West from South 31st Street West to Shiloh Road. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford advised there were no protests received on the SID. He said if the Council passed the creation of the SID that evening, invitations to bid would go out the end of August with construction beginning middle to late October. Mr. Mumford said a meeting would be scheduled with the property owners along King Avenue to talk about the construction schedule, and staff would be working with Northwestern Energy on power relocation ahead of the construction. Mr. Mumford said there would be a roundabout at the entrance of Shiloh Crossing.

Councilmember Ruegamer asked if the Shiloh Overlay District would be extended down the south side of King Avenue West from 31st Street West to Shiloh. Mr. Mumford said that was his understanding.

Councilmember Veis asked if the construction would be on the southern portion or northern portion of the road. Mr. Mumford said the road would be split down the middle with widening in both directions. He said he hoped the power poles would be moved early so vehicles could be shifted north while the utilities were put in and then shifted back so the other half of the road could be built.

Councilmember Veis asked if one lane would go to the north and one lane to the south. Mr. Mumford said he believed so, but he was not positive because he had not seen the final plans. Councilmember Veis asked if the grade would drop. Mr. Mumford said the grade would drop at 32nd Street West with a gradual insignificant drop from 32nd to Shiloh Road. Councilmember Veis asked if there had been an assessment of the noise involved with the project. Mr. Mumford said a noise assessment was not required, so they had not done one. Councilmember Veis asked about the noise level on the north part of the road since the current grade was fairly high. Mr. Mumford said the road would not be raised any higher and may drop down from 32nd Street West.

Councilmember Stevens asked for the exact location of Shiloh Crossing. Mr. Mumford said the Shiloh Crossing property was located on King Avenue just east of Shiloh Road on the southeast corner. Councilmember Stevens commented there would be a roundabout there and another one at Shiloh and King and asked how far apart they would be. Mr. Mumford said the distance would be approximately 700 to 800 feet.

Councilmember Veis asked if the roundabout would link up with any other current roads or have a north access out of it. Mr. Mumford said he was not sure because the plans had not been finalized.

Councilmember Jones said originally the project was to be funded by Mr. Corning and re-paid; but it appeared that was no longer the plan and asked if it was due to the interest rate. Mr. Mumford said Mr. Corning was originally going to fund the project through a loan, and the City would pay the interest plus closing costs. He said during this year's budget process, it was determined Solid Waste had enough required reserve funding for the City to borrow from itself, which would save the City a considerable amount of money in interest.

Mayor Tussing asked Attorney Brooks if Items 3(a) and 3(b) needed to be separated with two public hearings and two votes. Attorney Brooks advised one public hearing could be held for both, but the votes needed to be separated.

The public hearing was opened. There were no speakers. The public hearing was closed.

Councilmember Veis moved for approval of the resolution creating Special Improvement District 1379, King Avenue West from South 31st Street West to Shiloh Road, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

(b) Resolution #07-18587 authorizing construction bids for Special Improvement District 1379, King Avenue West from South 31st Street West to Shiloh Road. Staff recommends approval (Action: approval or disapproval of staff recommendation.)

Councilmember Veis moved for approval of the resolution authorizing construction bids for Special Improvement District 1379, King Avenue West from South 31st Street West to Shiloh Road, seconded by Councilmember Boyer. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTIONS creating Light Maintenance District 301 - Josephine Crossing Subdivision (Resolution #07-18588) and

Light Maintenance District 302 – Grand Avenue, 8th to 12th Streets West (Resolution #07-18589). Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford advised there were no protests for creation of the Josephine Crossing Subdivision Light Maintenance District. He said there was one protest for the creation of the Grand Avenue, 8th to 12th Street West, Light Maintenance District from Mr. Pierce, whose property backed up to Grand Avenue. Mr. Mumford stated the protest was 4.9% of the SID. He said Mr. Pierce's property was addressed on Grand Avenue, but access to the property was an easement that ran through two other properties. Mr. Mumford said there was a 6-foot high retaining wall separating Mr. Pierce's property from Grand Avenue, which was why Mr. Pierce did not feel he would benefit directly from the SID.

Councilmember Stevens asked if it would be possible to re-address Mr. Pierce's property. Mr. Mumford said re-addressing had been considered, but the property bordered no other street but Grand Avenue; and there was no other physical connection to another street.

The public hearing was opened. There were no speakers. The public hearing was closed.

Councilmember Stevens moved for approval of the resolutions for SILMD 301 and 302 creating light maintenance districts for Josephine Crossing and Grand Avenue, 8th to 12th Street West, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND RESOLUTION #07-18590 vacating the north/south alley located on Lots 1A-12A, Amended Plat of a Portion of Lots 1 through 12, Block 38, Town of Billings; and Lots 13-24, Block 38, Town of Billings, for a value of \$25,500.00. Billings Food Bank, petitioners. Staff recommends approval (Action: approval or disapproval of staff recommendation.) City Administrator Volek said there was no presentation, but staff was available for questions.

The public hearing was opened.

MARGIE BONNER, 4613 TOYON DRIVE, said she was an attorney with the Brown Law Firm and represented the Billings Food Bank in their petition requesting the vacation of the north/south alley in Block 38 of the Original Townsite, City of Billings. Ms. Bonner stated the Billings Food Bank owned 22 out of the 24 lots in the block and had spent the last several years acquiring the property on the block. She said the remaining two lots were owned by Partner Beverages LLC, which was an entity of Mountain Mudd, who had joined in the petition for vacation. Ms. Bonner advised the reason the Food Bank was asking for the alley vacation was to build a new facility, which would extend over the alley area. She said the utilities located in the alley had signed off on the vacation request, and the Billings Food Bank would relocate the utilities at their own expense and grant any necessary easements for the utilities. Ms. Bonner said Public Works Engineering had placed a value on the alley of \$25,500.00, and the Billings Food Bank was requesting the City consider a donation of the value.

Councilmember Stevens referenced the memorandum, which stated the request for donation was based on previous donations to the Deering Clinic and Montana Rescue Mission. Councilmember Stevens asked if there was an expectation or precedent being set. Ms. Bonner said she felt it was the "right thing to do". Ms. Bonner asked Attorney Brooks if charging the entity for the alley was state law or just an adopted policy. Attorney Brooks referenced Ordinance 22-902 that allowed the City Council to dispose of property it had control or ownership over to include alleys, sidewalks, rights-of-way, etc. He said the City Council was entitled to charge or not to charge on a case-by-case basis for city-owned property. Councilmember Stevens asked Ms. Bonner if the Council voted not to donate the alley, would she consider a lawsuit against the City using the previous two donations as precedent. Ms. Bonner stated the issue had not been discussed.

Councilmember Ronquillo stated the City had recently sold an alley to the hospital, and the hospital did not ask the City to donate the property. He said his concern with donating property was "when will it all end". He said the former City Council set a precedent donating land, and it needed to stop somewhere. Ms. Bonner stated the Council needed to address the request based upon the value the Food Bank provided to the community. She said Council needed to consider the fact that the donation would help bring additional funds into the community in the form of grants. She said many of the grant applications the Food Bank qualified for required matching monies from the community, and the donation could be used for part of their local community match. Ms. Bonner said it was on that basis the County committed to a \$25,000.00 donation. Ms. Bonner asked the Council to also consider that the Food Bank would be located in the new east end TIFD. She said the Food Bank had done a "private urban renewal" by acquiring a number of blighted properties on the block. Ms. Bonner said the small store on the corner would remain.

SHERYLE SHANDY, 1132 ANCHOR STREET, EXECUTIVE DIRECTOR OF THE BILLINGS FOOD BANK, displayed a picture of the new building and how it would be positioned on the block and a picture of how the current alley would run directly down the middle of the new building. Ms. Shandy said when the Food Bank began acquiring property on the block there were four houses that were blighted; one was condemned, and the deed holder on the condemned property was the City of Billings. She said the property had been burned on four different occasions, and it was torn down at the Food Bank's expense. Ms. Shandy said the current store on the corner was a blighted service station. She said the Food Bank did a valuable service and asked very little of the City for the amount of work it did. Ms. Shandy said she took exception to their donation request being placed in the same category as the hospitals, because there were varying degrees of non-profits.

Councilmember Boyer asked Ms. Shandy for the amount of money the Billings Food Bank had invested in acquiring the properties and bringing them up to code. Ms. Shandy said the acquisition of the last two properties was over \$100,000.00. She said the burned property was purchased for unpaid taxes by a

"friend of the Food Bank" who gave it to the Food Bank, but the demolition expenses were \$20,000.00.

Councilmember Gaghen asked if there would be problems with underground tanks at the former service station site where the store was currently located. Ms. Shandy said the only tanks remaining had been punched and filled and were underneath the building. She said all of the outer tanks had been removed.

Councilmember Ruegamer said the Council was being put in a tough spot. He asked Ms. Shandy if she felt it was the role of the City to help the poor people. Ms. Shandy said she felt it was the City's role to help all of its citizens regardless of income. She said unlike the hospitals, the Food Bank did not sell its services.

JERRY THOMAS, 2010 PLAZA DRIVE, said he had been on the Food Bank Foundation Board for a number of years and currently chaired the Building Committee. He said the cost to build the new building was \$4.6 million, and they had raised approximately \$1.7 million. Mr. Thomas said the kick-off campaign to raise the additional funds was just started, and it was important for the City to show its support as they go out into the business community. He said the current facility was built during the World War II era and was now structurally unsound with the collapse of the warehouse floor, inefficiencies with the heating and cooling, and deterioration of the roof and support beams. Mr. Thomas said he witnessed that evening the Council's support of economic growth with the building of King Avenue West. He said there are citizens who need the Council's support so they are provided with healthy food.

Councilmember Stevens said the agenda item was two separate issues; one was the vacation, and the second was the donation. She asked if the Council decided not to donate the land, would the Food Bank still want the vacation of the alley. Mr. Thomas said they needed the vacation regardless. He said if the Food Bank did not get the vacation, the whole project would have to be backed up and reconsidered.

Mayor Tussing asked if the \$25,000.00 from the County was a cash donation. Mr. Thomas said it was a cash donation from the County's Payment in Lieu of Tax Fund. Mayor Tussing asked if the vacation was approved without charge, would the City be asked for additional cash or land. Mr. Thomas said he would not anticipate any additional requests. Ms. Shandy said they may go to the Downtown Billings Partnership for assistance since they were in a new tax increment district.

Councilmember Boyer asked Ms. Shandy if the Food Bank would be on the tax roles in the new tax increment district. Ms. Shandy said they would not pay property tax but would pay all of the special improvement taxes.

LAYNE CHASE, BOARD CHAIRMAN OF THE FOOD BANK, said he had been involved with the Food Bank for 16 years. He said when he started in 1991, that year's distribution was 500,000 pounds of food; and as of June 30, 2007, 6.7 million pounds of food had been distributed. Mr. Chase said in 1991 approximately \$20,000.00 a year was spent buying food because most of it was donated, and this past year over \$200,000.00 was spent buying food for the

needy. He said two years ago they began a senior commodity with a distribution of approximately 345 boxes a month to seniors, and currently they distributed 1,760 boxes.

MICHAEL BURKE, 2109 LOCUST, asked the Council to consider the vacation and the donation of the land to the Food Bank. Mr. Burke said he was an architect involved with the project at St. Patrick's Co-Cathedral, and he felt all churches in the community would support the donation. He said he had been through the alley, and the City had not maintained it in a long time.

EDWARD HOEM, 1030 DOROTHY LANE, said he was not there to discourage the Council from supporting the Food Bank. He said he recently purchased a building in the special improvements district and had done an informal inquiry about purchasing some land from the City. He said there was a dispute as to the location of the property lines, and he said he was advised he could not purchase the land. He said he was at the meeting to listen to the dialogue and the decision-making process as to donating land versus selling land.

Councilmember Gaghen asked Mr. Hoem if it was the same parcel of land. Mr. Hoem said no; the property was located on the corner of 2nd and 14th Avenue North, just west of Metra.

Mayor Tussing asked Mr. Hoem if he had been told why he could not purchase the land. Mr. Hoem said no. Councilmember Veis asked Mr. Hoem if he had spoken with the Public Works Director. Mr. Hoem said he spoke to the City Administrator, who was a great help. Mr. Hoem said he wanted to know the difference in donating city-owned land versus selling city-owned land.

City Administrator Volek said Mr. Hoem and his partner were renovating a former tire store into a retail location. She said Mr. Hoem had raised some very interesting points that Planning Director Candi Beaudry and she had discussed. She said in the new east end TIFD district there were properties constructed years ago while in the county that were going to be very difficult to bring to code. Ms. Volek said one of the main issues was right-of-way and parking access for Mr. Hoem's structure, as well as an alley that ran behind it. Ms. Volek said she was unable to alleviate Mr. Hoem's condition because of existing laws and codes. She said she promised Mr. Hoem the City would look hard at the requirements in that district before embarking fully on the east end TIFD district in case changes needed to be made in order to make the older structures compliant. Ms. Volek said it was a very difficult situation, and she appreciated Mr. Hoem's graciousness in the matter.

Councilmember Stevens said she had received a call about Mr. Hoem's property that morning, and she said a meeting would be arranged in the near future. She said there were real issues in the east end TIFD district with bringing some of the buildings up to code. Councilmember Stevens said the codes may need to be changed in the area so the area could be revitalized so people are not told they need to go to the west end.

Mr. Hoem said he believed the Food Bank would be a great neighbor in the special improvements district, but he also believed, as a business person, he would be as well. He said all businesses need the City's support.

LEE NIXON, 32 ANTELOPE TRAIL, said he had been with the Food Bank for many years. He said the Food Bank had provided 20 feet on the east side of the new building for utilities and right-of-way. He said the alley from 4th Avenue North entered next to the railroad tracks. Mr. Nixon said on the south side of the property there was not enough width for a street.

DAVID BOVEE, 424 LEWIS AVENUE, said there was always a good reason for donating right-of-way. He said the requests for donated right-of-way would not end, especially in that district. He said everyone would have a good reason for needing so much of the street or alley. Mr. Bovee said he would still like to be able to drive everywhere in town.

There were no other speakers. The public hearing was closed.

Councilmember Gaghen moved for approval of the vacation of the alley to allow for construction of the new Food Bank at no cost, seconded by Councilmember Ulledalen.

Councilmember Stevens said she had been very critical of non-profits in the past, and the Billings Food Bank was a “shining example” of how to do it right. She said the Food Bank did terrific work, but she could not vote in good conscience for the vacation without a cost attached. Councilmember Stevens said she fully supported the vacation but not the donation of the land to the Food Bank because of the precedent it would set. She asked who would decide which non-profit would receive a donation and which non-profit would not receive a donation. Councilmember Stevens said the information of past vacations to non-profits that was pulled up concerned her because it indicated that the precedent had been set, and the Council had to continue donating or risk a lawsuit. Councilmember Stevens said she could not support the donation, especially given that the City was struggling financially.

Councilmember Gaghen said she understood Councilmember Stevens’ concerns but specifics needed to be looked at, as well as the individual non-profits or for-profits who requested donations or special considerations. She said she felt the City would still get quite a bargain by donating the right-of-way. Councilmember Gaghen said the Food Bank touched almost every aspect of the community.

Mayor Tussing stated he would support the motion because the land was worth virtually nothing. He said it would be different if buyers were “beating down our door” to purchase it. Mayor Tussing said they should not ask what was best for City government and ask what was best for the community.

Councilmember Veis said he felt the Food Bank did a great job, but the City needed to put a value on the land and get the value for it. He said he voted in favor of the donation to the Deering Clinic but now felt he had made a mistake. Councilmember Veis said city donations were going to get to a point that would never end because every non-profit would think they should get one. Councilmember Veis said the City could look for money elsewhere in the budget to donate to the Food Bank like the County did, but he did not feel that was a good idea. Councilmember Veis made a substitute motion to approve the resolution to vacate the alley with a total cost to the Food Bank of \$21,000.00, seconded by Councilmember Jones.

Councilmember Boyer said it was a tough decision, but she would vote for the original motion and not the substitute motion.

Councilmember Ruegamer said he knew the Food Bank did a great job and respected the people who testified that evening, but he wanted to remind the petitioners that they were asking Council to donate taxpayer dollars. Councilmember Ruegamer said the “precedent thing” did not concern him. He said what was done for the Deering Clinic and the Rescue Mission had no application to the current Food Bank request. Councilmember Ruegamer said the four necessities of life were food, clothing, shelter, and healthcare. He said donations to the non-profits ultimately saved the taxpayers money by keeping people healthier. Councilman Ruegamer said he would support vacating the alley and donating it to the Food Bank.

Mayor Tussing said the donation was not like the City would be giving away any money in tax dollars. He said the City would not be charging the Food Bank for something that was not worth anything to anyone else anyway. Mayor Tussing said he would not support the substitute motion.

Councilmember Gaghen stated she would not support the substitute motion.

Councilmember Veis said the Food Bank was a good organization in a part of town that did not need an alley, but he was concerned there would be a time in the future when a vacation was requested on high value land where a lot of people want it. He said it would be very easy for a non-profit to bring up past donations, and the Council would become “backed into a corner” because donations had been done so many times in the past. Councilmember Veis stated the hospitals were very interested in vacating prime streets in their areas and if the City kept donating land, sooner or later the hospitals would come to the City wanting vacations of streets they did not want to pay for. Councilmember Veis said he felt if Council wanted to give the Food Bank money, the money needed to be found somewhere else in the budget.

Councilmember Ulledalen said he supported gifting the land to the Food Bank. He said the land was originally laid out in the “horse and buggy” days and could only be sold to the adjoining property owners anyway. He said it would be helping the most fragile people in the community. Councilman Ulledalen said the Council extended subsidies to private businesses all the time, and he did not understand why there was so much “hand wringing” over this request. He said he would have no problem saying no to future requests, if necessary, and would be supporting the vacation at no cost.

Councilmember Jones asked Public Works Director Dave Mumford for the breakdown that would go to the Billings Food Bank and the Partner Beverages, LLC. Mr. Mumford said he did not know, but the land would be proportional to the adjacent properties. He said the only property charged would be the Food Bank because they were requesting the vacation.

Ms. Bonner said the Food Bank owned 22 out of the 24 lots in the block. She said if the alley were vacated, a land trade would be anticipated with Partner Beverages LLC for other property, so the Food Bank would end up with all of it. Councilmember Jones said the resolution read “ownership of the vacated area

will revert to the adjacent owners", so Partner Beverages LLC, which was a for-profit business, would end up with the property at no cost. Councilmember Jones verified with Mr. Mumford that the resolution stated the City would be giving the property to a private entity, and Mr. Mumford said that was correct. Councilmember Jones said the \$21,000.00 was taxpayer money, and he felt the Council should not be making the decision. He said the Food Bank would have opportunities through the TIFD district to get money at some point and that was where they should get it. He said the Food Bank was a non-taxpaying entity, so there would be no increment on the construction.

Mayor Tussing asked Ms. Shandy to respond to Councilmember Jones' comment. Councilmember Jones questioned if that was appropriate because he did not ask a question; he only made a statement.

Ms. Shandy said the Food Bank would not get TIFD money because it was a non-taxpaying entity so they would not have access to that funding.

Councilmember Jones said it was his understanding the infrastructure would be paid for, so the Food Bank would be eligible in some way for some of the TIFD money. Councilmember Jones asked for Attorney Brooks' opinion. Attorney Brooks stated the infrastructure such as streets, sidewalks, water, and sewer, would be improved by the increment. Councilmember Veis asked Attorney Brooks if the TIFD district law would preclude the Food Bank from receiving TIFD district dollars. Attorney Brooks said he did not think the Food Bank would be eligible to receive dollars, only improvements to the infrastructure. He said they might receive tax dollars indirectly through the Downtown Partnership.

City Administrator Volek stated that one of the standards by which appropriations were made was that every dollar spent had to raise \$5 in additional contribution by the business to create additional taxable value, so she did not feel they would be eligible for the tax increment.

Councilmember Veis said it did not make sense because North Park was included in the east end TIFD district so improvements could be made there. City Administrator Volek stated that was a public improvement, and not private.

Councilmember Ruegamer moved to call for the question, seconded by Councilmember Boyer. On a voice vote, the motion to call for the question was approved. Councilmembers Stevens and Jones voted 'no'.

On a roll call vote, the substitute motion to approve the resolution to vacate the alley with a total cost to the Food Bank of \$21,000.00 failed 5 to 4. Councilmembers Gaghen, Ruegamer, Ulledalen, Boyer, and Mayor Tussing voted 'no'. Councilmembers Ronquillo, Stevens, Veis, and Jones voted 'yes'.

Mayor Tussing asked for discussion on the original motion. Councilmember Stevens said it had been stated that what happened in the past would not be applicable, but she had concerns about setting a precedent. She asked Attorney Brooks to discuss precedent in the situation from a legal perspective. Attorney Brooks stated that under City Code Section 22-605, the Council had the authority to set the compensation for any street or alley vacation, and Section 22-902 was a similar authority to dispose of City property by leasing,

selling, or donating. He said whether those would override a lawsuit in the future because someone claimed a violation of equal protection, would be hard to say.

Councilmember Ulledalen asked Attorney Brooks if the City could be sued by anybody for anything. Attorney Brooks said that was correct.

Councilmember Gaghen stated this was the third instance in which the City had been asked to donate property that would affect structures or buildings through non-profit efforts within the past five years. She said \$50,000 was requested from the Deering Clinic, \$35,000 was requested by the Rescue Mission, and \$20,000 to \$25,000 was being requested by the Food Bank.

Councilmember Jones pointed out the donation was not just to a non-profit but also to a for-profit business.

On a voice vote, the original motion passed 5 to 4. Councilmembers Jones, Ronquillo, Stevens, and Veis voted 'no'.

Councilmember Jones asked for clarification of the original motion. The original motion was clarified as "approval to vacate the alley at no cost". Mayor Tussing confirmed with the councilmembers that they all understood the motion.

6. PUBLIC HEARING AND FIRST READING ORDINANCE adopting the International Fire Code (IFC), 2006 Edition, as the Billings Fire Code. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Tina Volek said there was no Staff report, but Staff was available for questions. Councilmember Ronquillo said he felt working with one code was good for the City, private utilities, and other businesses.

The public hearing was opened. There were no speakers. The public hearing was closed.

Councilmember Ronquillo moved for approval of adoption of the International Fire Code, 2006, Edition, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

7. PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.
(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

- STAN MCINTIRE, 1425 BITTERROOT, asked the Council to reconsider their approval of the Emma Jean Heights Subdivision and the location of Anchor Street, due to traffic safety issues. Mr. McIntire said he had sent each councilmember an e-mail that day with good reasons why it should be reconsidered. Councilmember Stevens told Mr. McIntire she received his e-mail but had not had time to respond. She asked Public Works Director Dave Mumford if he was familiar with the subdivision and asked him to comment on the location of the exit for that subdivision with respect to the bridge over the canal. Mr. Mumford said the City Traffic Engineer and HKM Engineering, Inc. reviewed the site distance requirements with the speed and traffic on the road; and found the site distance was

adequate according to highway standards. Councilmember Stevens asked for a background on the code and standard. Mr. Mumford said there was a stopping site distance and passing site distance standard. He said the stopping site distance was determined by distance, reaction time of the driver, and maneuverability and they all met within the code of the American Association of Street & Highway Transportation Officials (AASHTO). Mr. Mumford said there was also an issue over the depth and relocation of a manhole, which would have caused major issues. Councilmember Stevens asked what speed limit the study was based upon because the 35 mph speed limit was not followed. Mr. Mumford said he was not sure but knew it was not based on the posted speed limit of 35 mph. Councilmember Ulledalen asked Mr. McIntire for an update on the traffic changes over the last few years. Mr. McIntire said within the last three years since Cherry Creek Estates opened, the traffic had tripled in both directions. He said there had been traffic surveys done recently because Cherry Creek Estates wanted to expand, but he did not know the exact numbers. Mr. McIntire said there would be three separate 'T' roads coming onto Bitterroot within 150 yards. He said he had talked with Joe Sheridan at the Utilities Division and the engineer for HKM Engineering, and they indicated there was a problem connecting to the sewer at Erin Street where a manhole was located. He said there was less than a 12-inch elevation difference between Erin and Anchor Street. Mr. McIntire said he was told they could not gravity flow the sewer if it went to Erin Street. Mr. McIntire said it could be done; but it would be an inconvenience and cost more money. Mr. McIntire said, for safety reasons, one of the 'T' intersections needed to be removed. Councilmember Ulledalen asked Mr. McIntire how much traffic was coming from farther east. Mr. McIntire said the people from Shepherd liked to take the back road and come in on Bitterroot to get to Main Street at Hilltop or Lake Elmo Road.

- ANGIE BRODMERKLE, 296 MONROE, asked the Council for help cleaning up the drug use, underage drinking, and vandalism in her neighborhood. She said her tires were slashed that previous evening. She said when they called the police they were retaliated against by the people causing the problems. Ms. Brodmerkle said they had contacted landlords of some of the properties, and they did not seem to care as long as the rent was being paid. Councilmember Ronquillo said the people causing the problems all have scanners and know when the police have been called. Councilmember Ronquillo asked the police officer present at the meeting if changing to a different frequency would help. The police officer said there were no encrypted channels on their units. Ms. Brodmerkle said they were told to tell the dispatcher not to broadcast the call. She said she and some of her neighbors were trying to clean up the area, and it was very difficult. Councilmember Boyer asked if the landlords maintained the properties on the block and asked if the City's minimum standard ordinance could be enforced with the landlords to get the troublemakers

out of there. City Administrator Volek said she would meet with Ms. Brodmerkle after the meeting and put her in touch with the appropriate authorities in the Police Department.

- JACK JOHNSON, 2303 VIRGINIA LANE, said he would like to see the police officers, firemen, security officers, and code enforcement officers in full uniform wear hats. He said hats would stand out and make them easier to recognize. Mr. Johnson also commented the reception of the council meetings on Channel 7 was very poor.

There were no other speakers, and the public comment period was closed.

Council Initiatives

- Councilmember Stevens MOVED to have staff look into the development of a TIFD district for the Heights, particularly along Main Street, seconded by Councilmember Veis. She said Planning Director Candi Beaudry stated there was a need for a feasibility study to determine what part of Main Street was blighted. Councilmember Stevens said she had concerns that Ms. Beaudry indicated the feasibility study could not be done until next year. She said she was afraid some of the properties that had recently been re-done would miss getting into the TIFD at the lower amount. Councilmember Stevens said something else may have to be delayed to move forward with the feasibility study. City Administrator Volek stated the South Side Tax Increment Financing District had already been approved by Council, and the study was underway. She said because the Planning Department was short two planners, Ms. Beaudry had indicated to her it was not possible to begin another study until the first of the year. Councilmember Boyer said the whole TIFD district issue needed to be moved on quickly or it might not occur and asked if the feasibility study had to be done. Ms. Volek said it was part of the statute. Councilmember Boyer asked if the study could be contracted out, and Ms. Volek said she did not know how it would be funded. Councilmember Ruegamer said he empathized with the Planning Department and said the better course of action would be to convey the concerns about tax increment districts to the Governor and the Lieutenant Governor and ask them not to take them away. Councilmember Stevens said there had been redevelopment on Main Street, and the properties would not get the advantage of the increment if the study was delayed. Councilmember Jones asked what the City had contracted with CTA to do downtown. Mr. Mumford said CTA was working for BSEDA and not the City. Councilmember Boyer asked if the feasibility study could move forward more quickly if they found someone to pay for it. City Administrator Volek said that would be a possibility but reminded Council that tax bills were due in September, so they would be hard pressed to get the South Side Study completed in a timely manner. Councilmember Ulledalen asked Ms. Volek what she was referring to as the South Side TIFD. Ms. Volek said Council authorized a study of the

area. She said the first step was to determine if there was blight or a lack of future feasibility for growth. Councilmember Ulledalen said he agreed with Councilmember Stevens that the City needed to move quickly in the Heights. Ms. Volek said she and Staff understood the need, but the staffing issue was a factor. Councilmember Stevens said she would like to do some “out of the box” thinking to get it done. Councilmember Ulledalen suggested starting a committee. City Administrator Volek said Staff would address the issue as quickly as possible. Councilmember Ulledalen seconded Councilmember Stevens’ motion. On a voice vote, the motion was unanimously approved.

- Councilmember Veis suggested inviting a Yellowstone County delegation and state legislators to attend Council Work Sessions one or two at a time to visit about what went on in the legislative session; what was done well; what was not done well; why they voted for certain things and not others. He said he felt setting aside 15 minutes of every meeting to meet with them would be beneficial. Councilmember Ruegamer said he thought it was a great idea. Councilmember Ulledalen said he agreed with Councilmember Veis that Council needed to market better to the delegations and waiting three months before the session to start lobbying would be too late. Councilmember Ulledalen suggested forming a committee to talk about better ways to lobby the delegations. Councilmembers Veis, Ulledalen, Boyer, and Ruegamer volunteered to form a committee to foster specific ideas and strategies on how to communicate with the delegations.
- Councilmember Gaghen commented about the long lines of passengers that form while waiting to pass through security at the Airport especially at 6:00 a.m. and in the late evening hours. She said passengers panic because they are afraid of missing their flights and asked if there was a solution. City Administrator Volek stated that the security was a federal function, and the TSA was the responsible party. She said she would convey the concerns to the Airport Director.

ADJOURN: The meeting adjourned at 8:50 p.m.

CITY OF BILLINGS

Ron Tussing, Mayor

ATTEST:

Cari Martin, City Clerk